



IN THE COURT OF THE ADDITIONAL MUNSIFF, KOTTAYAM.

Present:- Smt. Ashadevi V.S., B.A., LL.B (Hons),  
Additional Munsiff.

Thursday 8<sup>th</sup> day of April, 2021.  
18<sup>th</sup> day of Chaithra, 1943.

O.S. No. 481/2018

Plaintiffs:-

- 1 Santhosh George, S/o Late Fr.George Moolayil,  
aged 49 years, residing at Moolayil House,  
Manarcadu Village, Kuzhipurayidom Kara,  
Manarcadu P.O, Kottayam Taluk.
- 2 M.A.Churian, S/o Andrews, aged 87 years  
residing at Maniala House, Manarcadu Village,  
Areeparampu Kara, Areeparampu P.O,  
Kottayam Taluk.

By Adv. M.C.Skariah.

Defendants:-

- 1 St.Mary's Church (Cathedral), Manarcadu  
represented by its Vicar Fr.Laiju Markose @  
James Markose, S/o Markose, aged 40 years  
residing at Padiyara House, Panachikkadu Village,  
Pathamuttam Kara, Pathamuttam P.O,  
Kottayam Taluk.
- 2 Fr.Laiju Markose, S/o Markose, aged 40 years  
residing at Padiyara House, Panachikkadu Village,  
Pathamuttam Kara, Pathamuttam P.O,  
Kottayam Taluk.

C.R 2 200/-





- 3 Fr.Abraham Varghese, S/o V.V.Joy, aged 37 years, residing at Vadasseril House, Panachikkadu Village, Kolladu Kara, Kolladu P.O, Kottayam Taluk.
- 4 Fr.Andrews Joseph, S/o Joseph, aged 32 years residing at Ikaramattathil House, Pampady Village, Pampady Kara, South Pampady P.O, Kottayam Taluk.
- 5 Fr.Abraham John @ Jobin P.Ulahannan, S/o Ulahannan, aged 32 years, Thekkatharayil House, Thottackadu Village, Thottackadu Kara, Thottackadu P.O, Changanacherry Taluk.
- 6 Fr.E.T.Kuriakose Core Episcopa, aged 80 years residing at Ittiadathu House, Manarcadu Village, Malam Kara, Malam P.O, Kottayam Taluk.
- 7 Fr.Kuriakose Kizhakkedathu, aged 75 years residing at Kizhakkedathu House, Manarcadu Village, Malam Kara, Malam P.O, Kottayam Taluk.
- 8 Fr.Kuriakose Abraham, aged 64 years, Karukayil House, Manarcadu Village, Malam Kara, Malam P.O, Kottayam Taluk.
- 9 Fr. Mathews Manavath, aged 63 years, Manavath House, Manarcadu Village, Kuzhipurayidam Kara, Manarcadu P.O, Kottayam Taluk.
- 10 Fr.Andrews Chiravathra, aged 58 years, Chiravathra House, Manarcadu Village, Kuzhipurayidom Kara, Thiruvanchoor P.O, Kottayam Taluk.

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- 11 Fr. Kuriakose Kalayil, aged 56 years, Kalayil House, Manarcadu Village, Malam Kara, Malam P.O, Kottayam Taluk.
- 12 Fr.M.I.Thomas Mattathil, aged 60 years, Mattathil House, Manarcadu Village, Malam Kara, Malam P.O, Kottayam Taluk.
- 13 Fr.K.M.George, aged 50 years, Kunnel House, Manarcadu Village, Manarcadu Kara, Manarcadu P.O, Kottayam Taluk.
- 14 Fr.Eby John, S/o John, aged 32 years, Kurichimala House, Pampady Village, Velloor Kara, Velloor P.O, Kottayam Taluk.
- 15 George Mathew, S/o Mathew, aged 63 years, Vattamala House, Manarcadu Village, Manarcadu Kara, Manarcadu P.O, Kottayam Taluk.(Died)
- 16 C.P.Philip, S/o Philip, aged 66 years, Chemmathu House, Manarcadu Village, Manarcadu Kara, Manarcadu P.O, Kottayam Taluk.
- 17 Sabu Abraham, S/o Abraham, aged 52 years, Mylakkattu House, Manarcadu Village, Malam Kara, Malam P.O, Kottayam Taluk.
- Addl.18 Mathew P.T., aged 59, S/o Kora Thomas residing at Padiyara House, Malam Kara, Malam P.O, Manarcadu Village, Kottayam.



- Addl.19 Renjith Mathew, S/o Mathew, aged 52, Ottaplackal House, Manarcadu Kara, Manarcadu Village, Manarcadu P.O, Kottayam.
- Addl.20 Mathew Jacob, S/o Mathew, aged 60 years, Kochuparambil House, Manarcadu Kara, Manarcadu Village, Manarcadu P.O, Kottayam.
- Addl.21 Shaji Mathew, S/o Mathew, aged 58 years, Puthumana House, Malam Kara, Malam P.O, Manarcadu Village, Kottayam.
- Addl.22 Melvin V.Kuruvilla, S/o Kuruvilla, aged 28 years, Thalachirackal House, Malam Kara, Malam P.O, Manarcadu Village, Kottayam.

Additional D18 impleaded as per order in IA.No.2056/2018 dated 13.11.2018.

Additional D19 impleaded as per order in IA.No.1522/2019 dated 30.09.2020.

Additional D20 to D22 impleaded as per order in IA.No.1/2020 dated 03.07.2020.

D1 to D5 by Adv. Thomas Adhikaran.

D6 by Adv.V.T.Dinakaran.

D7 to D14 and D21 by Adv. Anil D.Kartha.

D16 & D20 by Adv. Rajeev P.Nair.

D17 & D22 by Adv. P.J.Philip and Adv. Bobby John.

D15 by Adv. Adv. P.J.Philip.

D19 by Adv.Ananathakrishnan A.Kartha.

D18 by Adv.Joseph Abraham.

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This suit having been finally heard on 26.03.2021 and the court on 29.03.2021 delivered the following:-

### J U D G M E N T

The Hon'ble Supreme Court by the decision in Varghese Vs. St. Peter's and St. Paul's Syrian Orthodox church reported in 2017(3) KLT 261(SC) puts an end to the litigations pending between Orthodox Jacobite factions of Malankara Syrian church. Pursuant to said decision the same bench of the Hon'ble Apex Court directed, all the trial courts before which suits of like nature are pending, to examine each and every case and decide whether said case covers by the decision in Varghese case and if it covers then to decide the case forth with and if not then to proceed with the trial. In compliance of said direction the parties are heard and the following decision.

2. **Brief facts averred in the plaint:-** Plaintiffs are members of St. Mary's Church Manarcadu. Suit filed for Permanent Prohibitory Injunction and other reliefs. The church arrayed as 1<sup>st</sup> defendant in the suit. Said church established at the end of 16<sup>th</sup> century is a constituent Church of Malankara Orthodox Syrian



Church coming under the Kottayam Diocese and is governed by the 1934 constitution. The 1<sup>st</sup> defendant is the Vicar and defendants 2 to 5 are the Assistant Vicars of 1<sup>st</sup> defendant church by Kalpana K132/2018 dated 02.07.2018 issued by the Assistant Metropolitan exercising the powers of Diocesan Metropolitan. Defendants 7 to 14 claimed to be priests belongs to Yacobaya Suriyani Christiani Sabha formed in the year 2002 and are governed under the constitution called as 2002 constitution. Defendants 15 to 17 are the trustees of 1<sup>st</sup> defendant church. Defendants 18 and 19 were later impleaded in the suit vide order in IA 2056/18 and IA 2601/2019 as new trustees of the church who were elected on the death of 9<sup>th</sup> and 15<sup>th</sup> defendants. Defendants 20 to 22 were impleaded in the suit as per order in IA 1/2020 as persons now holding and possessing the cash and properties of the 1<sup>st</sup> defendant church as trustees. IA 2466/18 filed by V.V Mathew claiming to be a person having notice of the publication under Order 1 Rule 8 CPC and having similar interest of plaintiffs in the suit to added him as additional 3<sup>rd</sup> plaintiff in the suit. Said petitioner and the counsel remained absent continuously





and not pressed for hearing the petition after 29.07.2020. Hence said petition was dismissed.

3. Plaintiffs alleged that the defendants 6 to 22 were not elected as per the 1934 constitution. Hence, they have no right to conduct religious service in the 1<sup>st</sup> defendant church, in the shrine and in the institutions - educational and other under the management of the 1<sup>st</sup> defendant church. Plaintiffs further alleged that after the decision of Hon'ble Supreme court in Varghese case the defendants 6 to 22 lost all their rights over the 1<sup>st</sup> defendant church and its properties and their position now is as trespassers. On 01.02.2018, when the plaintiffs and some other parishioners of the church demanded the defendants not to conduct religious service in 1<sup>st</sup> defendant church and its institutions they threatened the plaintiffs that they will continue as priests and trustees of the church and will bring Priests and prelates not elected as per 1934 constitution to the 1<sup>st</sup> defendant church and its institutions to conduct religious service. Hence the suit to prevent their such unlawful activities by a decree of Permanent Prohibitory Injunction.



4. All defendants appeared. Defendant No. 15 died pending the suit. Defendants 18 and 19 were impleaded in his place. Defendants 2 to 5 supported the plaint claim and filed written statement with counter claim. 6<sup>th</sup> defendant filed separate written statement. Defendants 7 to 12 filed written statement jointly. Defendants 16, 17, 19, 20, 21 and 22 filed written statement separately.

5. The written statement and counter claim of defendants 2 to 5 contains following contentions:- Plaint claim and the cause of action alleged in the plaint admitted by defendants 2 to 5. They claimed that, they are the duly appointed Vicars and Assistant Vicars of the 1<sup>st</sup> defendant church and are legally entitled to exercise such powers in the church and the institution managed by the church. Thus they filed counter claim against defendants 3 to 17 to restrain them, from entering into 1<sup>st</sup> defendant church or its cemetery or other scheduled institutions to conduct religious service and also to prevent them from bringing priests or prelates not appointed under 1934 constitution for conducting religious service in the 1<sup>st</sup> defendant church and the institutions under the management

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of the 1<sup>st</sup> defendant church. The counter claim was later amended as per decision in IA.05/2020 and the words '3 to 17' after counter claim defendants deleted and add the words successors after counter claim defendants.

6. The 6<sup>th</sup> defendant filed written statement with following contentions. The plaintiffs have no locus standi to file the suit. 2<sup>nd</sup> defendant has no right to represent the church as he hold an interest adverse to that of the church and its parish members. First defendant church is a public trust and the reliefs sought in the suit is against the Trustee and for their removal from the management of the trust, thus made the suit within the frame work of Section 92 CPC. Suit filed without leave under said section is therefore liable to be rejected. The 6<sup>th</sup> defendant is the present Vicar of the church and he is entitled to continue in such position till his retirement. The suit is also barred under the principles of resjudicata. There was a suit as OS No. 315/1960 before Munsiff's Court Kottayam which held that the St. Mary's Church Manarcadu formed a distinct trust distinct from the common Jacobite Syrian Sabha and the administration of the church vested in the parishioners and the trustees appointed by



them. The constitution of the 1<sup>st</sup> defendant church though printed in its present form 1958 and the same was in existence very prior to that and ever since the management of 1<sup>st</sup> defendant church is as per said constitution. Plaintiffs and defendants 2 to 5 cannot be claimed as parishioners of the church as they defy the authority of patriarch and the metropolitan appointed by him. The church has a history of 1,000 years and more. It never comes under the 1934 constitution or managed as per its provisions. The kalpana said to have issued appointing defendants 2 to 5 as Vicar and Assistant Vicars of 1<sup>st</sup> defendant church is without any authority and the Diocesan Metropolitan Kottayam has no power or control over the 1<sup>st</sup> Defendant church.

7. The metropolitan of Malankara Orthodox church has no authority either spiritual or temporal over 1<sup>st</sup> defendant church. Defendants 6 to 22 are the priests and trustees elected as per the constitution of the 1<sup>st</sup> defendant church and not as per the 1934 constitution or the 2002 constitution. The church has no allegiance to the Jacobite factions nor it participated in the Mulanthuruthy synod. At the same the church is also not a constituent of Malankara

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Association. The first defendant was not a party in PMA case and did not participate in the meeting claimed to have conducted on 20.03.2002 at Parumala Seminary 1<sup>st</sup> defendant church did not participate in the factional fray between the Patriarch and Catholics groups. No parallel system of administration or religious service introduced or carried on by the defendants and the same distinct system of temporal and spiritual administration followed ever since the origin of the church. The decision in Varghese case applicable only to a constituent church of Malankara church. The 6<sup>th</sup> defendant contented that the 1<sup>st</sup> defendant possess its own ethnic identity and beliefs which distinguishes it from a constituent of Malankara church. The peculiar religious rights and customs prevailing in first defendant church stated specifically in written statement were origin of the church, apostolic flow from St. Peters instead of St. Thomas who is accepted as the Holy see by the Malankara Sabha, unique rituals and observance including 'Ettunombu' 'Nadathurappu' etc. the selection of priests from the members of the parish by the general body, the separate constitution and the special form of administrative set up prevailed in 1<sup>st</sup> defendant church made it



unique. The Catholicos always accepted such distinct features of the 1<sup>st</sup> defendant church and never attempted to impose 1934 constitution on 1<sup>st</sup> defendant church even after decision of Hon'ble Supreme Court in 1995.

8. The main contentions put forward by defendants 7 to 12 in their written statement were that, the first defendant church was not properly instituted in the plaint as the 2<sup>nd</sup> defendant who is holding an interest detriment to the 1<sup>st</sup> defendant church cannot be made to represent the church in a suit. The church can only be represented by its trustees. The first defendant church is a public trust hence the suit, which has the character of removing the existing trustees and the appointment of new trustees squarely comes within the ambit of section 92 CPC and the filing of the suit without leave under section 92 CPC made it not maintainable and is to be rejected. Defendants 6 to 14 are the duly appointed priests of the church and they cannot be removed or replaced by the defendants 2 to 5. The decree and judgment in OS 315/1960 made it clear that the 1<sup>st</sup> defendant church formed a distinct trust distinct from the common Jacobite Syrian Sabha and the administration of

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the church vested in parishioners and the trustees appointed by them. The plaintiffs who have no faith in Parishioners and the metropolitan appointed by him cannot be considered as members of 1<sup>st</sup> defendant church. The 1<sup>st</sup> defendant church is never a constituent of Malankara church. It is an independent church which is unique in so many factors. The Metropolitan of Malankara Orthodox church has no right or authority to promulgate kalpanas to the 1<sup>st</sup> defendant church. The averment in the plaint that, the 1<sup>st</sup> defendant church and defendants 6 to 14 are priests belonging to Yacobaya Suriyani Christiani Sabha formed in the year 2002 and governed under 2002 constitution is false and misleading and the first defendant church never participated in the factional fight existed in Malankara Sabha. It is not a participant in the Mulanthuruthy Synod, similarly it is not a constituent of Malankara Association. The decision of the Hon'ble Supreme Court is only applicable to a constituent of the Malankara Church. The 2002 constitution has nothing to do with the first defendant church and no parallel system of administration existed for the first defendant church. Being the duly elected priests and trustees defendants 6 to 17 cannot be restrained from performing



any of their such functions. Even the properties of the church on which the 1934 constitution is applicable the administration is not vested with the Catholics or the Metropolitan. The Hon'ble Supreme Court in it's 1995 Judgment excluded the Knanaya Sabha, Simhasanam churches, Evangelical Association of the East and St. Anthony's church, Mangalore from the administration of 1934 constitution, though those churches are part of Malankara Church. The distinct mode of administration, rituals and practices and the constitution followed by first defendant church enables the first defendant church to claim an entity independent of the Malankara Church. The Hon'ble Supreme Court also recognised the right of a group of people to accept the Patriarch as their religious head and that they cannot be compelled to accept the Catholicos as their spiritual head. The special characteristic of first defendant church in the matter of administration and religious practices and rituals also stated specially by the defendants 7 to 12 in their written statement. It is also submitted that, the constitution of first defendant church was accepted and recognised by the Metropolitans even after the disposal of the Sammuduyam suit and also at the time


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of unification of the two factions existing in Malankara Sabha. The decree in O.S.No.315/1960 made it clear that, the first defendant church is a distinct public trust, distinct from the Jacobite faction of church. The appeal filed against said judgment and decree seen compromised without publication under Order 1 Rule 8 CPC and has no legal sustainability. No amendment of the constitution also done in pursuance of such compromise. Thus the compromise decree has no binding force on the first defendant church. Plaintiffs are trying to grab the church and it's properties with the help of some dishonest followers giving misinterpretation to the judgment of Hon'ble Supreme Court so as to made it applicable to the first defendant church. Their intention is to upset the present management of the church and the peaceful atmosphere prevailed in the first defendant church and it's institutions.

9. The 15<sup>th</sup> defendant died pending the suit.

10. The written statement filed by the 16<sup>th</sup> defendant contains the following contentions:- The suit is barred by resjudicata and also bad for want of leave under Section 92 CPC. The first defendant church was not properly represented in the suit.





The first defendant church belongs to the members of the Cathedral who constituted the General Body and is governed by a Nadapadi Kramam accepted and adopted by all the members centuries ago and was periodically amended incorporating all legal suggestions of the parishioners and finally amended as per resolution passed in a meeting held on 23<sup>rd</sup> Mithunam 1109 ME. The present constitution of the church was approved and adopted by the General Body in the meeting held on 22.09.1957 and it was printed in 1958. All the families in first defendant church except 3 or 4 families who pay allegiance to the Catholics, are following the same system of administration and religious practices established much earlier. The Malankara Orthodox Syrian church came into existence only in 1912 as a faction seceding from the Jacobite Syrian Church of which the Patriarch was and is the supreme authority. The right, title and ownership of the cathedral as well as its properties vested with the trust led by the elected trustees. The Malankara Orthodox Syrian church has no right, interest, title of possession of the schedule property and plaintiffs have no locus standi to file the suit. The first defendant church is following the apostolic see of St. Peter on whom






Lord Jesus Christ bestowed the ecclesiastical imprimatur to build the church of the lord. Said fact is clear from the contexts narrated in Holy Bible. The first defendant church cannot be and is not at all of member of Malankara Orthodox Syrian church which approves and follows the ecclesiastical flow from St.Thomas. The Patriarch is now occupying the throne of St.Peter and the members of first defendant church believed that, only the priests appointed by the Patriarch can perform the seven sacraments of the church and thereby only they can be relieved from their world by sins. Such a religious faith cannot be changed by the decree of a civil court compelling them to accept the priests appointed by the Catholics, who pay allegiance to the throne of St.Thomas and not that of the St.Peter.

11. **The 17<sup>th</sup> defendant also contended that,** the suit is bad for want of leave under Section 92 CPC. The suit is also not maintainable due to the bar created by Section 3 of the Places of Worship Act. If the reliefs are granted, it will amount to conversion of the nature and identity of the Manarcadu church a religious place of worship to an entirely different religious entity. The church

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possesses its own ethic identity and belief and it is followed with all its rigor even now. Only the members of the 12 families who participated in the origin and establishment of the church are allowed to be members of the church. The first defendant church does not recognise St.Thomas as founder of Malankara Sabha. The authority and blessings to establish a church was given to St.Peter alone. The 17<sup>th</sup> defendant quoted the relevant portions of Holy Bible to substantiate that, St.Peter alone was bestowed with the divine authority to establish Sabha and only through his Apostolic See can be the followers relieved from their wordly sins. The member of the first defendant church believed that, only a priest or prelate who received the hierarchical appointment from the throne of St.Peter through the Patriarch of Antioch can perform the seven sacraments of the Christianity. Said belief cannot be allowed to get upset by a decree of civil court. The first defendant is not an episcopal church in the strict sense. Even though the constitution of the church provides for getting approval of the appointment of the priests, for the managing committee etc. from the duly authorised representative of the Patriarch, the said representative has no say either in selection








or the appointment of such priests in the church. The representative of the Patriarch has no right or authority to deny the appointment of the priests made by the General Body. The properties of the church are not purchased in the name of the Bishops, but in the name of the trustees in office. The first defendant church was elevated as a Cathedral church by Patriarch in 2004. Though Cathedral is the church which is the principal church in the diocese, which contains a Bishop's throne, when the Bishop passes away his holy relic is to be entombed within the cathedral. It is significant to note that, the first defendant church is not the throne of any Bishop and there is no tomb of any Bishop inside the church. There cannot be two cathedrals within one diocese. The cathedral of Patriarch faction is the St. Joseph's Cathedral church, Kottayam and that of the Catholics faction is at Mar Kuriakose Dayara Pampady Church. The defendants 13 and 14 were allowed to serve the first defendant church on request made by the General Body to the Diocesan Metropolitan and they are having no similar rights as that of the other priests elected by the General Body.



12. The first defendant church is governed by its own constitution which is distinct in several aspects from the 1934 constitution. Said constitution was recognised, admitted and accepted by all including the Catholicos. Even after the disposal of Samudayam Suit, the authorities under 1934 constitution accepted the constitution of the first defendant church. The first defendant church is a public trust vested with the above unique characteristics which remains unalterable at any point of time. If the suit is decreed as prayed for, it will completely alter the unique characteristic of Manarcadu church and will convert it to another trust which amounts to violations of Section 3 of the Places of Worship Act 1991. On that ground also, the suit is liable to be dismissed. Defendants 6 to 14 are performing their functions as Vicars and Assistant Vicars of first defendant church even today and the Diocesan Metropolitan of Malankara Church has no authority to appoint defendants 1 to 5 as the priests and Assistant Priests of the first defendant church. Defendants 6 to 17 are not part of the Yacobaya Suriyani Christiani Sabha formed in the year 2002 and has no allegiance to the 2002 constitution of said Sabha. Likewise the 1934 constitution also has








no application to the first defendant church. The decision said to have taken on 26.12.1934 not binding on the first defendant church. Prior to 1934 and after said constitution, the first defendant is being governed by its own constitution. The first defendant did not send any representative to participate in the election conducted at Parumala seminary on 20.03.2002. Defendants 6 to 17 being the duly appointed priests and trustees are discharging their such functions and they cannot be restrained from doing so by a misinterpretation of the decision of the Hon'ble Apex Court. The decision in O.S.No.315/1960 that, the first defendant church is a distinct public trust is still in existence and is not merged in compromise decree passed in appeal. No amendment to the constitution also carried out in pursuance of said decree in appeal. The decision of the Hon'ble Supreme Court in PMA Metropolitan case and K.S.Varghese case have application only to a constituent of Malankara church. The decision in PMA Metropolitan case recognised the separate existence of individual churches even within the Malankara Sabha and also held that "where a particular people say that, they believe in spiritual superiority of the Patriarch and



that it is an article of faith with them, the court cannot say 'No' your spiritual superior is the Catholicos. The 17<sup>th</sup> defendant also thus prayed for dismissal of the suit.

13. The 18<sup>th</sup> defendant filed written statement contained **contentions that**, the suit is not maintainable under law or on facts. The suit is ill -conceived and ill motivated. The plaintiffs are not the parishioners of the first defendant Church and have no locus-standi to file the suit. Defendants No.6 to 14 are the competent priests to offer services in the church. Defendant No.6 to 17 are not intruders but persons competent to act in their specified spheres and they are acting accordingly. The first defendant church is a religious and charitable public trust constituted and established centuries back by the people of the locality by their contributions and offerings for the purpose of Christian religious community worship and sacraments. This court has no jurisdiction to entertain the suit. No leave of the Court as required under Section 92 the Code of Civil Procedure. Hence, the suit is liable to be dismissed in limine. The averment that, the first defendant church is a constituent Church of Malankara Orthodox Syrian Church is denied. It is not governed by








the 1934 constitution of 'Malankara Church'. Only the Trustees of the Church as elected by its Parishioners as per the Rules and Regulations of the first defendant church are entitled to represent the church. The second defendant is not the Vicar of the Church. The 6<sup>th</sup> Defendant is the Vicar and defendant Nos.7 to 14 are the Priests serving in the said church for past several years. Defendant No.15 to 17 were its elected Trustees. The first defendant church is functioning as per its own custom, practice and the Rules and Regulations formed by the authors of the Trust for its own governance and administration much prior to the alleged constitution of 1934. The first defendant church has never ever adopted or accepted the alleged constitution of 1934 and as such the Kalpanas mentioned in the plaint are not applicable or binding on the church. The first defendant church was never a parish church under Malankara Orthodox Syrian Church. The first defendant church which had its own traditions, customs, practices and Rules was never a party to any of those proceedings and the decisions and observations made therein are not binding on this church. So also the averment regarding the list of 915 churches alleged to have been



submitted by the Orthodox faction is not binding on the first defendant church. The first defendant church has not authorised anyone to file such a list. Any such arbitrary and unauthorised action cannot bind the first defendant church and is illegal. The actions and services of Defendant No.6 to 17 of the first defendant church are not illegal or unauthorised. The plaintiffs have not approached this court with clean hands.

14. **Additional 19<sup>th</sup> defendant filed written statement contained contentions that,** the suit is not maintainable for lack of locus standi of the plaintiff and also bad for want of leave under Section 92 CPC. The members of defendant church believe in the Apostolic See of St. Peter and only priest appointed by Patriarch, who now adorned the throne of St. Peter, can officiate in the church. That church was established as following the apostolic successions of St. Peter. That faith is the fundamental and basic character of the trust created by the establishment of the church. As the trust was created for a definite purpose and with a specific character long prior to 1934, that nature and character cannot be altered by the scheme of administration formed in 1934, for once a trust is always a trust.







It is pertinent to note that, the 1934 constitution did not create any trust and the same is silent with respect to the trust created with the object of following the Apostolic See of St.Peter. Thus, said constitution is applicable only to those who believe in and follow the throne of St.Thomas. During the period of unification also Manarcadu church remained independent following its own constitution.

15. There was another suit filed before the Sub Court, Kottayam as O.S.No.148/1975 and the reliefs in the suit is same as the reliefs in said suit. The plaintiffs are now estopped from claiming said reliefs in the present suit. The third relief is barred by law of limitation. Thus, the 19<sup>th</sup> defendant also prays for dismissal of the suit.

16. Defendant No.20 filed written statement with following contentions. The plaintiffs have no locus standi to file the suit and the first defendant church is not properly represented in the suit since the second defendant cannot represent the first defendant church. The suit is filed for removal of Trustee and it must be filed with leave under Section 92 CPC and the suit without leave is non-



est in the eye of law and can only be rejected. Defendant 6 to 14 are the duly appointed Vicars and Assistant Vicars of the church without removing them legally defendants 2 to 5 cannot be appointed in their place. The suit is barred by resjudicata for the reason of decree in O.S.No.315/1960. The issue whether first defendant church is a constituent of Malankara church was not decided by the Hon'ble Supreme Court in PMA Metropolitan case and K.S.Varghese case. A priest who is not appointed as per the Apostolic See of St.Peter cannot impart sacraments in the church. The church is built upon the trust which is the faith following Apostolic succession of St.Peter. OS.148/1975 filed before Hon'ble Sub Court for the same relief in this suit which was transferred to the Special Court and renumbered as O.S.No.72/77. Said suit was abandoned. Another suit No.426/1997 renumbered as O.S.No.16/1997 on the file of Additional District Court Ernakulam also abandoned and was dismissed for default. The same cause of action alleged in said suits raised in this suit also by which this suit barred under the principles of resjudicata. First defendant church is not a part of Jacobite faction of the Manarcadu church. The faithful of the church follow





the old Jacobite faith and the church itself is for believing, preaching and practising Jacobite faith which follows the Saint Jacob Baradaeus, the Bishop of Edesa from AD543 till 578. The believers in first defendant church believed that, the seven sacraments of Christianity can be performed only by the priests appointed through the Apostolic See of St.Peter. The Catholicos who now denounced the Holy Patriarch See of St.Peter and did not consider the needs of the faithful who believes that throne of St.Peter succeed through the Patriarch. The relief in the suit is in fact a prayer for recovery of possession and cannot be altered by the scheme of administration called the 1934 constitution. The plaintiffs do not have a new cause of action against the first defendant therein that was included in O.S.No.148/1978 renumbered as O.S.No.72/17 of Special Court, Ernakulam and O.S.No.426/1992 renumbered as O.S.No.16/1997 and which were abandoned without prosecution. The first defendant church is following the Jacobite faith, and not have any allegiance to the Jacobite faction of the Malankara Sabha. The church only recognise St.Peter as the founder of the church and not St.Thomas which the Malankara Sabha is having allegiance.



17. The 22<sup>nd</sup> defendant filed written statement contending that, the suit is bad for leave under Section 92 CPC. It is the faith of parishioners/ beneficiaries of St.Marys church, Manarcadu from him to his successors in office namely the Patriarch of Antioch from Patriarch to Metropolitans, Catholicos and from them to priests/ vicars, ordained by them. Accordingly, it is believed as an Article of Faith that efficacy of sacraments can be obtained only from such priests/ vicars. At present, defendants 6 to 14 are such priests. The pious purpose of the establishment of Manarcadu church is to have religious services conducted therein for the benefit of parishioners only through religious dignitaries possessing spiritual grace emanating from the Apostolic Throne of St.Peter through the Patriarch and his delegates. The petitioners of Manarcadu church are entitled to enforce their collective and individual personal rights of religious faith that, they are entitled to have mandatory sacraments only through a Vicar following the St.Peter faith, which is a part of their right to life under Article 21 of the constitution of India, apart from their right under Article 25 and 26. Civil court is incompetent to pass any decree or order that will violate the

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guaranteed fundamental rights of Parishioners of Manarcadu church. General Body of Manarcadu church has never accepted 1934 constitution for administration of Manarcadu church at any point of time. Plaintiffs does not plead so in the plaint. Manarcadu church has not sent representatives to any of the meetings of Malankara Association dated 26.12.1958, 17.05.1962, 28.12.1965. Malankara Association meeting of 31.12.1970 was not attended by persons mentioned in the 'authorisation letter' relied upon by plaintiffs. It is for plaintiffs to prove the names of churches and representatives who attended the meetings of Malankara Association held on 26.12.1958, 17.05.1962, 28.12.1965 or 31.12.1970, by producing the concerned attendance registers. Clause 12 of 1934 constitution scored off from 'authorisation' letter for Malankara Association of 31.12.1970. These representatives did not attend meeting of Malankara Association meeting. In the absence of Attendance Registers of Meetings on above dates, presumption ought to be drawn that the Manarcadu church has not sent representatives to these meetings of Association unlike churches like Kolencherry, Varikoli and Mannathoor churches. Diocesan Metropolitan of

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Malankara church has never, ever appointed any priest to Manarcadu church invoking Article 40 of 1934 constitution at any point of time. If it was done plaintiff would certainly have produced copies of orders by metropolitan to prove the same. Plaintiffs have no such case. From 22.05.1964 to 1973-1974, Malankara church functioned as a unified church under Patriarch of Antioch. Even during this period, the Vicar and priests of Manarcadu church were not appointed invoking Article 40 of 1934 Constitution. The Malankara church, its authorities-Caholicos cum Malankara Metropolitan, priests, faithful members have all accepted the above referred unique mode of spiritual and temporal administration of Manarcadu church. Kottayam Diocesan Metropolitan of Malankara Church having conceded, recognized, and affirmed through Kalpanas issued from 1965 to 1973, the unique mode of spiritual and temporal administration of Manarcadu church, cannot now turn around and make a legitimate grievance of these very things in this suit through plaintiffs. They cannot be heard to say so. They must be deemed to have given up and abandoned all their objections to the aforesaid unique mode of administration in Manarcadu church. There is no





declaration in K S Varghese Judgment that administration of churches like Manarcadu functioning with its own unique mode of spiritual and temporal administration, even during unification period between 1964 to 1970 should be altered as claimed in the present plaint. There is no cause of action for the suit. Thus, the 22<sup>nd</sup> defendant also prayed for dismissal of the suit.

18. Based on the direction of Hon'ble Supreme Court, in Civil Appeal No.7115-7116 of 2019 (Arising from SLP(C) Nos.20661-20662 of 2019) and direction in the records proceedings dated 14.02.2020, this court framed following points for consideration:-

- 1) Whether this suit is covered by the verdict of Hon'ble Apex Court in K.S.Varghese and others V. St.Peter and Paul's Syrian Orthodox Church and others (2017 (3) KLT 261)?
- 2) Reliefs and costs?

19. The documents produced from the side of plaintiffs marked as Ext.A1 to A44 and from the side of defendants marked as Exts.B1 to B52.




20. The subject matter in the suit relates to the administration of St. Marys Manarcadu Church, the membership of which though confined to a particular group of people following Christian faith but the worshippers spread among the vast section of people irrespective of their religious faith. The places of worship turned to be battle fields now where the people find it difficult to make their divergent interest have rest on a common peaceful platform. The first defendant church has the history of centuries and both parties admitted that it was established as per the divine blessing revealed to the head of seven families residing in different areas at Manarcadu. The church by its name established in the name of Virgin Mary the mother of Jesus and of Entire world according to Christian faith. The claim of the plaintiff is that the 1<sup>st</sup> defendant church is a constituent of Malankara Church and is to be governed by the 1934 constitution.

21. According to the plaintiffs, as the first defendant church is to be governed by the 1934 constitution, the decision of the Hon'ble, Supreme Court in K.S.Varghese V/s. St. Peter's and St. Paul's church (2017(3) KLT 261) is applicable to this case. Learned





counsel for plaintiffs argued that the 1<sup>st</sup> defendant church is a constituent of Malankara Church and pointed out that, the 1<sup>st</sup> defendant church is in the list of 1064 churches appended to the plaint in O.S. No. 4/1979 (filed as O.S.No.142/1974 before Hon'ble Sub Court, Kottayam and renumbered as O.S.No.4/1979 of Additional District Court, Ernakulam) as serial number, 602. When the decision of the Hon'ble Supreme court in PMA Metropolitan case (AIR 1995 SC 2001) came the listed churches which were pleaded as the constituent church of the Malankara Orthodox church, became under the governance of 1934 constitution. Thereafter whatever constitution adopted by the 1<sup>st</sup> defendant church turned to be unsustainable in law. Learned counsel for plaintiff also argued that the contentions of the defendants 6 to 22 that the 1<sup>st</sup> defendant church is not a constituent of Malankara church is baseless and invalid. Apart from being in the list of churches in the plaint in O.S.No. 142/1974, the 1<sup>st</sup> defendant church can only be considered as part of Malankara Church on the following reasons. In Paragraph No.69 of PMA Metropolitan case the Hon'ble Apex Court found that both factions were believers and followers of Syrian Church and their





spiritual head is Patriarch of Antioch and the exercise of autonomy of Parishioners has no meaning. The parishes are bound by 1934 constitution, the character of Churches cannot be altered from Episcopal to Congregational and freedom to dissociate from Malankara Association cannot arise. By discussion in paragraph 74 of the judgment it is stated by the Apex court that the parish Churches cannot claim that they are autonomous bodies because they have their separate byelaws. The byelaws of the parish churches became irrelevant by the operation of 1934 constitution and the constitution governs and regulate the affairs of parish churches. According to plaintiffs the decision of Hon'ble Supreme Court in K S Varghese case reiterated the findings in PMA Metropolitan case and held that it is not open to the parish churches to content that they are autonomous and the 1934 constitution and 1995 judgment are not binding on the parish churches. It is also held by the Apex Court that the principles enunciated in respect of Knanaya churches cannot be made applicable in respect of Parish churches. The written statement filed by the Vicar of the 1<sup>st</sup> defendant church in O.S.315/1960 on the file of Munsiff's Court,





Kottayam shows that he was the member of the Malankara Managing committee of Malankara Orthodox Syrian church during the period of unification from 1959 to 1972 and he took part in the said committee which was formed under the 1934 constitution, and the members of the committee took oath to abide by the constitution and erstwhile Patriarch group also swore loyalty to 1934 constitution. Moreover after the decision of the Hon'ble Supreme court in PMA Metropolitan case and K S Varghese none of the parties can claim they are only bound by the decision of Civil Court.

22. Learned counsel for plaintiffs also argued that it is evident from the authorization letter and intimation of the election of the delegates to the Malankara Association and Attendance register of Association Meeting which was held in 1970 that the 1<sup>st</sup> defendant church elected delegates to the meeting of Malankara Association convened as per the provisions of 1934 constitution. It can also be seen from the annual report of Kottayam Diocese of Malankara Orthodox Syrian church that, they had paid Rs.7,002.50 as share to the Diocese from the income of the church and Rs.148/- as Kaimuth to Diocesan Metropolitan. These amounts are statutorily payable by

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each and every church who accepts 1934 constitution. The Diocesan Metropolitan issued Kalpanas for administration of 1<sup>st</sup> defendant church and the 7<sup>th</sup> defendant was ordained by Diocesan Metropolitan by Kalpana No.240 dated 26.08.1967. All these proved that the administration of the 1<sup>st</sup> defendant church is strictly in accordance with 1934 constitution. According to plaintiffs there are enough materials available for establishing that the defendants 6 to 22 are now paying allegiance to the Jacobite faction. The 7<sup>th</sup> defendant was the Secretary Diocese of the Patriarch faction and the same is evident from documents produced in O.S. No.97/2011 on the file of Munsiff's Court Kottayam. The written statement of 16<sup>th</sup> defendant in this case admitted that the 1<sup>st</sup> defendant church accepted the Catholicos ordained by the Patriarch and not the Catholicos of Orthodox faction. The Telephone Directory of the 1<sup>st</sup> defendant church contained the name St. Mary's Jacobite church.


23. It is also relevant to consider that the constitution relied on by the 1<sup>st</sup> defendant church contained the clause that, they will accept the constitution accepted by the Patriarch and the constitution of the church will be amended in accordance with the





constitution accepted by Patriarch. In 1959 and 1965 the Patriarch accepted the 1934 constitution, then the 1<sup>st</sup> defendant church cannot claim that they are not bound by the 1934 constitution. Again in clause 11,12,13,19,21 to 23,25,26,35,40,43,48,49,50 to 52,53,66,75,80,86,87,128,134,135 and 199 of the constitution relied on by the defendants 6 to 22 shows the relation of the church with the Diocesan Metropolitan of Patriarch faction.

24. Learned counsel for plaintiffs further argued that, the Hon'ble Apex court through the ruling reported in 2019 (4) KLT Page 1 directed the courts to decide all pending matters following the aforesaid decision which has being affirmed thereafter by umpteen times. It is also made clear to all concerned more so, to the courts in future the violation of judgment and Order to be viewed seriously. Through the ruling reported in 2020 (4 KLT SN.45 case No.40) Hon'ble High Court (Mar Miletius Yuhanorn Vs. Mar Thomas Dionysius) held that, no triable issues can be framed for consideration by the High Court or by the trial court under Order 14 Rule 1 of CPC, since it will certainly have the effect of disregarding the binding conclusions of the Hon'ble Supreme Court. The case of





plaintiffs is that, the first defendant church is a constituent church of Malankara Orthodox Syrian church. It is to be administered according to the 1934 Constitution of Malankara Orthodox Syrian Church.

25. Each and every points decided in K.S.Varghese case are applicable to this case also and hence the suit is only to be decreed. According to the plaintiffs there are sufficient materials before the court to prove that, the 1<sup>st</sup> defendant church is part of the Malankara Sabha. The contention of the defendants that their origin and the presence of the special rituals and practices in the church made them out of the membership of the Malankara Sabha is not legally sustainable. Said contention was unsustainable in the light of decision of Hon'ble Supreme court in PMA metropolitan case, which was reiterated in Varghese V/s. St. Peter's and St. Paul's Syrian Orthodox Church reported in 2017(3) KLT 261. Whatever be the origin of the church, when the church is established became part of the common faith which is episcopal in nature with the Patriarch as the religious head the Catholicos as the supreme power over religious and temporal sphere. Said proposition was clear from the






decision of the Supreme Court “ Suffice it to be say that the parishes are the churches which cannot claim to be separate or autonomous bodies only because of their racial and cultural origin was different. Once they were established whether they came from out side or they were local persons it did not make any difference as after the establishment of the church with the permission of the Government and the Metropolitan and acknowledging the spiritual headship of Patriarch of Antioch which follows the apostolic succession, the nature of these churches was episcopal and, therefore, it was not open to them to claim that they should be treated as autonomous bodies merely because they have their separate bye laws. As stated earlier, the framing of the bye-laws in each church is necessary for purposes of governance and administration. But once a church is established then the property vests in the endowment. Since the objectives is to follow Syrian Orthodox Church which Patriarch of Antioch is the head they cannot claim to be independent, especially after the Constitution of 1934 was framed. It is also clear from the decision of the Hon'ble Supreme Court that, the Malankara Association is formed not only to manage the temporal affairs of the



church but also religious affairs. The Hon'ble Supreme Court by Para 158 of the 1995 judgment held that "It is thus clear that the Malankara Association was formed not only to manage the temporal affairs of the Church but also its religious affairs and that the appointment of Metropolitans was subjected to acceptance by the people of Malankara. The emphasis is upon the people of Malankara and not upon the individual Churches/ Parish Churches. It thus appears that while the membership of the Malankara Association is limited to one priest and two laymen elected by each Parish Assembly, the membership of the Malankara Church as such consists of all men and women, who accept the tenets and the faith. If the Malankara Association is to be vested with the control over the religious and communal affairs of the entire Malankara Christian community, it must truly and genuinely reflect the will of the entire spectrum of the community. A powerful body having control over both reasonable and fair manner. It may, therefore, be necessary to substitute clause (68) (now Clause (71)) and other relevant clauses of the constitution to achieve the aforesaid objective








which would also affirm the democratic principle, which appears to be one of the basic tenets of this Church.”

26. The Hon'ble Supreme court in Varghese V/s. St. Peter's and Paul's Syrian Orthodox Church reported in 2017 (3) KLT (SC) which held that, “Para 154 of the judgment in which it has been mentioned that in the absence of the Parish churches it cannot be declared that the properties held by Malankara Parish Churches vest in the Catholicos. In our opinion, the submission is wholly untenable. The representative suit was decided in 1995 and the judgment is binding even on those who were not parties to the case.

27. The members of the Patriarch group swore loyalty to the 1934 Constitution. The Patriarch of Antioch abandoned whatever objection he had by his acts and declarations in the year 1964 when he came to India on invitation from the Malankara Synod and he consecrated and duly installed the new Catholicos who was elected by the Malankara Association in accordance with the 1934 Constitution. Before that, the Patriarch also took care to define the territorial jurisdictions of the Patriarchate and the Catholicate. The Middle East that was supposed to be under the jurisdiction of the





Catholicos was excluded from his jurisdiction confining his authority to India and East alone. In our opinion this defining of the territorial jurisdiction also recognized the power of the Catholicos both in spiritual as well as temporal matters.

28. On going through the pleadings and the arguments advanced by both sides, it can be concluded that, the decision of Hon'ble Supreme Court in K S Varghese case is applicable only to a constituent of Malankara Church. The plaintiffs relied on the following facts to substantiate that, first defendant church is a parish of the Malankara church, but remained as part of the Patriarch faction.

- 1) The first defendant church has sent delegates to the Malankara Association from 1959 to 1972 for Kuriakose Vettikkunnel the then Vicar of first defendant church was elected as member of the Managing committee of Malankara Orthodox Syrian Church during 1959 to 1972 and the committee is formed under 1934 constitution.





- 2) The first defendant church paid the statutory liable sums to the Kottayam Diocese of Malankara Syrian Orthodox Church.
- 3) Mar Ivanios Metropolitan of Kottayam Diocese of Malankara Orthodox Syrian Church issued Kalpanas regarding the administration under 1934 constitution and the 7<sup>th</sup> defendant was even ordained by the metropolitan vide Kalpana No.240 dated 26.08.1967. There is instances in which the Vicar of the first defendant church were transferred to other church under 1934 constitution.
- 4) The constitution of the first defendant church declared that, the management of the church as per this constitution will be in force only till when the Malankara Yakobaya Suriyani Sabha in general or the Kottayam Diocese in particular adopted a constitution with the approval and of Patriarch of Antioch. The 1934 constitution was approved by the Patriarch. In clause 21 of the 1958 constitution, it is further stated that



when such a constitution came into being necessary changes shall be made in the constitution of first defendant church. When the Patriarch accepted 1934 constitution in 1959 and 1965, the first defendant church cannot say that, they are not bound by 1934 constitution.

- 5) The first clause in the constitution would definitely shows that the first defendant church belongs Patriarch faction and the clauses in the constitution which defines the relationship of the first defendant church with the Diocesan Metropolitan clearly shows their allegiance to the Metropolitan of Patriarch faction.
- 6) The contention of the defendants that they followed the faith succeeding the Apostolic see of St.Peter and not believed St.Thomas as founder of the church or the disciple of Jesus Christ is not able to establish a church addressed by the Hon'ble Supreme Court in K.S.Varghese case and was discarded and held as only an attempt to take over the control of the church by





putting faith in a Vicar who is running a parallel governance at the cost of the church.

- 7) By reason of 1958 constitution relied on by the defendants, they cannot claim any exemption from the affiliation of 1934 constitution. Such a contention was not maintainable in the light of decision of Hon'ble Supreme Court in PMA Metropolitan case which held that, the nature of churches under 1934 constitution is episcopal and it was not open to claim by independent churches that they should be treated as autonomous bodies merely because they have their own byelaws.
- 8) The records in O.S.No.97/2011 would prove that, the 7<sup>th</sup> defendant in the suit was Secretary of the Jacobite Syrian Association held under the 2002 constitution of the Patriarch faction.

29. Above all the plaint in O.S.No.4/1979 contained a list of churches under the Malankara Sabha in which the, first defendant church is the 602<sup>nd</sup> church. The suit decreed and the same resulted in the decision in PMA Metropolitan case by the Hon'ble Supreme



Court in 1995. Said suit was once filed under Order 1 Rule 8 CPC and the first defendant church did not get themselves impleaded in the suit in spite of the fact that there is pleading in the suit that the churches listed in the plaint are parishes of Malankara Church. Hence, now the defendants cannot content that, the first defendant church is not a constituent of Malankara Church.

30. Plaintiff contended that, thus in all aspects the first defendant church can only be treated as a parish of the Malankara Church and the decision in K S Varghese case squarely applicable to the suit.

31. Defendants 6 to 22 denied all such contentions made by the plaintiffs. According to them, the first defendant church is an independent church found as a public trust and is being governed by its own constitution right from its origin. Peculiar system of religious rites, customs and practices have been following in the church. The first defendant church is not a part of the Malankara church, ie. The orthodox faction and Jacobite faction where as it remains as an independent autonomous church under the spiritual leadership of Patriarch who adorned the throne of St.Peter. Only since the fact





that a church cannot stand by its own and as spiritual hierarchy followed can only be from the Patriarch, the church is paying allegiance to the Metropolitan appointed by the Patriarch but that does not mean that the church is a part of Patriarch faction. The first defendant church nor its representatives took part in the meeting which adopted the 1934 constitution or the meeting of Patriarch faction which adopted the 2002 constitution. The plaintiffs did not produce any document to prove that at any time after 1934 the first defendant church adopted the 1934 constitution or its administration carried over as per 1934 constitution. On the contra even though the period of unification of the two factions of Malankara Church, the Metropolitan of Kottayam Diocese admitted the administration of the first defendant church to be carried on as per 1958 constitution. Thereafter, since the Patriarch refused to approve the Metropolitan appointed by Catholicos, 1<sup>st</sup> defendant church accepted the spiritual hierarchy of the Diocesan Metropolitan appointed by Holy Patriarch, but that does not mean that the first defendant church is of the Patriarch faction. The plaintiffs did not produce any document that the representatives from the first



defendant church participated in the Malankara Association meeting. The payment of voluntary contributions to the Diocesan Metropolitan does not make the church part of the Malankara church. The Kalpanas issued by the Mar Ivanios Metropolitan is not under 1934 constitution but by approving the decisions taken by the General Body of first defendant church as per the 1958 constitution.

32. The use of word Jacobite in the constitution, telephone directory, etc cannot be at any stretch of imagination be concluded as the term 'Jacobite' in Syrian Jacobite Association established in 2002 which is considered as Patriarch faction of Malankara church. The written statement of 19<sup>th</sup> defendant contains the fact that said terms referred to the old jacobite faith which is the Oriental Orthodox Church established by saint Jacob also knows as 'Jacob Baradaeus' who belongs to 'non chalcedonian' obligation and it cannot be used against the first defendant church to call it as a Jacobite church. There is no merit in the argument that, Patriarch accepted 1934 constitution. In reply to the letter issued by Patriarch, it is the Catholicos who informed the Patriarch that, he accepted Patriarch subject to the provisions of 1934 constitution. It






cannot be extended to say that, Patriarch approved 1934 constitution. The church is not a part of Patriarch faction or the Orthodox faction, only for the purpose of spiritual control and hierarchy, the Metropolitan approved by Patriarch is accepted by the first defendant church and same is the status of the provisions of the constitution which defines the relationship of the 1<sup>st</sup> defendant church with Diocesan Metropolitan.

33. The 1<sup>st</sup> defendant church was established for maintaining the non Chalcedonian obligation and does not recognise St.Thomas as the founder of church. According to defendants St.Peter alone was bestowed with the authority to establish a church. The church is set up and is continuing with non chalcedonian obligation and it cannot be altered or extinguished. The seven sacraments which a Christian shall form or undergo can only be done by a priest appointed by Patriarch and not by anyone else. Another contention of the defendants by mere production of documents in another case no conclusion of fact can be taken by the court and it shall only be done by adducing evidence in this case. The decisions of Hon'ble Supreme Court in K.S.Varghese case and other cases are based on



the admission made by the churches involved in said cases that they are constituent of Malankara Church or that they adopted the 1934 constitution or else governed by said constitution at any point of time. The first defendant church did not took part in the Association which adopted the constitution not accepted the same or not even governed in accordance with said constitution at any point of time. Thus, the decisions in K.S.Varghese case and other cases relied on by the plaintiff is not applicable to the first defendant church.

34. The history of battle between hectic groups can be traced from the history narrated in Holy Bible itself. The fight always is for the cause of power and wealth. Though the groups have a common faith in same God and the means to reach God remained different and the same uphold differently by the people possessing divergent interest. Religious spirit was prominent at the first time and everything was based on religion, later the move based on religious on religious orientation turned to be more depends upon temporal matters than spiritual matters. The Malankara Church has its history claimed from the arrival of St.Thomas in India and by the establishment of 7½ churches by him. The Learned Counsel for






defendants contended that, St.Thomas did not establish any Sabha, but only churches and most of said churches are not now constituents of Malankara Church. According to defendants, the divine power to establish a Sabha was bestowed upon St.Peter alone and they even said to the extent that, St.Thomas was in fact not among the disciples when the holy spirit was given to the disciples by Jesus Christ by breathing on them and thus he did not receive the Holy Ghost through the breath of Lord Jesus Christ. The learned counsel for defendants argued that, in order to establish a Sabha, it should be under a spiritual head known as the Bishop or the Metropolitan. St.Thomas though established the churches not ordained any Bishop or Metropolitan and the claim of plaintiffs that, Malankara Sabha was found by St.Thomas is of no value. The history of the establishment of churches by St.Thomas and the establishment of the Patriarch and Catholicos of East are discussed by Hon'ble Supreme Court in paragraph No.6 of the PMA Metropolitan case (AIR 1995 SC 2001). It is seen from such discussion that, for governing the affairs of parish churches in Malankara Sabha in the eastern countries including India the





Catholicos of East was established and the ordination of priests were all done by the Catholicos of the East, though he was under the spiritual control of the Patriarch.

35. The Koonan Cross Oath at Mattancherry in 1664 made the final break away of Malankara Church from the Roman Catholic influence which was being forcibly imposed on the followers of Syrian Church. After the oath, the Puthenkoor people who declared independence from the Pope of Rome met at Mattancherry and consulted Marthoma Metran – I. He was ordained as Metropolitan of Malankara by the Patriarch of Antioch through his delegate from 1665 onwards therefore the ordination of Malankara Metropolitan was carried on by the delegate of Patriarch of Antioch. Another important event is the Mulanthuruthy Synod in 1876 in which the Syrian Christiani Association popularly known as Malankara Association was formed to manage the affairs of the churches and community. It is said that, accredited representatives of all the churches participated in that meeting. On 1928 August 16<sup>th</sup> the Managing Committee of the Malankara Association was authorised to draw up a constitution of the church. The constitution was framed in 1934.





36. The plaintiffs did not have a case that, the first defendant church was a party in the Mulanthuruthy Synod and the representatives of the first defendant Church were elected to the Malankara Association formed in that Synod. It is also not the case of the plaintiffs that the first defendant church participated in the meeting which adopted the 1934 constitution.

37. It is seen from the judgment in PMA Metropolitan case that before its adoption, the draft copy of 1934 Constitution was sent for approval to all parish churches and after its adoption also the copy was sent to all parishes. The plaintiffs did not have a case that either the draft copy or the adopted Constitution was sent to the 1st Defendant Church. It is also not the case of the plaintiffs that at any point of time the General Body of Manarcadu Church accepted the 1934 Constitution. Then the fact that plaintiffs relied on was that the representatives from Manarcadu Church participated in the Malankara Association in the years from 1958 to 1970. For supporting such contention, plaintiffs produced Exts.A39 to 41. The documents are the minutes of the Association Meeting, the Annual Report of the Malankara Association and also the Authorisation

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Letter from the Manarcadu Church which shows that 3 representatives were elected from the Edavaka to the Association. Thus, according to the plaintiffs, in the year 1968, 1969 and 1970 Manarcadu Church sent Representatives to the Association and it shows that, the Church was under the direct governance of the Diocesan Metropolitan Kottayam. The Church also had paid regular statutory sums provided in the 1934 Constitution to the Diocesan Metropolitan.

38. The defendants contented that, the documents relied on by the Plaintiffs cannot be considered in evidence as the documents are not proved in the manner it ought to be proved. On the other hand, they produced Ext.B9 Document which is minutes of the Manarcadu Church from 23.04.1961 to 28.05.1961 which shows that, the general body of the church decided to mark their objection to the Diocesan Metropolitan against his acts of disregarding the Constitution followed by the Church at the cost of 1934 Constitution. The document was objected by the plaintiffs as forged document as it did not contain the signature of the persons whose name are stated in it. The defendants submitted that, Ext.B17 is not






the original letter to the Metropolitan and it is only a record of such letter included in the Minutes of the Church and the signature of the persons need not be scribed on such a record.

39. It is found that, OS 4/1974 was filed before Hon'ble Sub Court originally in the year 1974. Plaintiffs claimed that, the 1st defendant Church was listed in the 1064 parish churches of the Malankara Church and the Judgment and Decree passed in said suit is binding on the 1st defendant Church. Said suit filed with leave under Order 1 Rule 8 CPC. Inspite of the fact that, it was a representative suit 1st defendant Church did not opt to get impleaded as a party in the suit till it results in the decision of Hon'ble Supreme Court in PMA Metropolitan case. Apart from the appended list, the pleading in the plaint contains definite statement that " The Malankara Church at present consists of an aggregate of about 15 lakhs of worshippers worshipping in more than 1000 parish churches. A List of churches is appended to the plaint. It has also other religious and charitable institutions. Irrespective of the sources from which money proceeded and the persons responsible for the establishment of each church, each church becomes a



constituent of the Malankara Church a well established religious community administered by and under the authority of the Malankara Metropolitan. The Parishioners of each church at the most are entitled to the benefits from the church and its properties. The Malankara Church is neither a union nor a federation of Congregational autonomous units but a church with a unique solidarity derived from Apostolic succession and authority of Malankara Metropolitan and the doctrines and creed followed by the church'. The Learned Counsel for plaintiffs argued that inspite of such a pleading in the plaint the 1st defendant church did not make any contest and now they are clearly estopped from claiming exemption for reason of the origin of the church.

40. The contention raised by the defendants were that the decision of the Hon'ble Supreme Court in PMA Metropolitan case did not declare the churches listed in the plaint as the constituent of Malankara Church, nor it granted any relief or declaration in respect of individual churches rather the Judgment of the Apex Court decided the common question whether Malankara Church is Episcopal in nature or not. The Court by the judgment even did not





intent to grant any relief touching the administration of parish churches. It is clear from the judgment which holds that -"No declaration can be granted affecting the rights of Parish Churches in their absence nor it can be declared that, the properties held by Malankara Parish churches vests in the Catholicos or the Malankara Metropolitan or the Metropolitan of the Diocese concerned as the case may be". Indeed no such specific relief has been asked for in the suit and without impleading the affected parties no declaration can be claimed by the plaintiffs that, their church is episcopal in nature. It is true that, the Hon'ble Supreme Court did not decide the individual status of each church included in the list appended with the plaint. In fact, such a question was not at all seen addressed by the Hon'ble Apex Court and did not come to a conclusion that, all churches that are included in the list appended to the plaint are constituent units or parish churches of Malankara Church. The argument of the Learned counsel for defendants that the decision of Hon'ble Supreme Court in K S Varghese case was also not on the basis that the three churches included in said case were in the list of churches appended in OS 4/1974 but on other grounds. I found






merit in the argument of the defendants that, the decision in PMA Metropolitan case did not consider whether the churches included in the list appended to the plaint is a constituent of Malankara Sabha or not. It is seen from the decision of the Division Bench of Hon'ble High Court against which the appeal filed in Hon'ble Supreme Court that, the impleading petitions filed by the individual churches were dismissed by the Division Bench by holding that the general question of the power of the Metropolitan is the subject matter of the litigation and individual churches have no role in it. It is any how very clear that, there was no contest that, the list appended with the plaint is genuine or not or in other words whether all the churches listed in the plaint are Parish churches of Malankara Sabha or not. It can also be concluded that, no decision regarding independent churches were taken in that appeal also. Said fact became more clear from the decision in Varghese case as the decision is based not on the ground that, the three churches included in the case were among the list of the churches along with the plaint. The considerations were on other ground such as the Mannathoor church had accepted and adopted the 1934 constitution by the decision of its General Body,



during 1959 to 1970, thereafter till filing of the respective suits, the Varikkoli church and the Kolencheri church also adopted the constitution and was governed by the 1934 constitution from 1959 to 1970. Thus, the nature and relation of the church with the Malankara Sabha was analysed separately on different grounds than for the reason of listing said churches in the plaint in O.S.No.4/1974.

41. The plaintiffs argued that, the Kalpanas issued by the Diocesan Metropolitan, Kottayam to the first defendant church clearly proves that, the first defendant church was governed by the 1934 constitution and the church later by the mismanagement of defendants 6 to 14 and their successors turned allegiance towards the Patriarch faction of the Sabha and continue as such. Exts.A21 to 29 are the Kalpanas relied on by the plaintiffs to claim that, the Diocesan Metropolitan, Kottayam was administering the first defendant church. It is seen from the Kalpanas that, the Diocesan Metropolitan, Kottayam approved the managing committee of the first defendant church for the years 1967 to 1973. It is found from said Kalpanas that, the managing committee elected for the first






defendant church was not one in accordance with 1934 constitution. Schedule B of 1934 constitution deals with the managing committee of Parish churches. It is seen from Article 25 that, the managing committee shall consist of 5 to 15 members other than the Vicar of the church. The Vicar is the President of the committee and if there is any Assistant Vicars, they are the Vice Presidents. The Vicar is the Trustee and there shall be another Trustee from among the members. It is seen from Exts.A21 to A28 that, the number of committee members elected from the first defendant church is more than thirty on every year and number of trustees is three. From the Kalpanas relied on by the plaintiffs, it is found that, the Diocesan Metropolitan, Kottayam approved the committee elected as per the constitution followed by the first defendant church and not according to the provisions of 1934 constitution. It is also significant that, the period of 1967 to 1970 is the period of unification in Malankara Sabha. Even during that period, the Diocesan Metropolitan, Kottayam not governed the first defendant church as per the provisions of 1934 constitution. It is also very pertinent that, if the Metropolitan has any control over the first defendant church at that





time, he can very well initiate actions for the violation of the 1934 constitution. Instead of the same, it is found that, the Metropolitan accepted the separate entity of first defendant church different from the parishes which comes under his control and governance. This court also cannot shut down its eyes to the fact that, apart from the Kalpanas from 1968 to 1971, there are no documents produced by the plaintiffs to prove that, the first defendant church became a member of the Orthodox Syrian Christian Association also known as Malankara Association to which the 1934 constitution is adopted and even after its adoption the first defendant church was brought under said constitution or the church made itself subject to said constitution by becoming a member of the Malankara Association. The other documents relied on by the plaintiffs were Exts.A38 to A41. Said documents were produced to prove that, representatives from the first defendant church participated in the Malankara Association meetings which were convened under the 1934 constitution. It is seen that, regarding the selection of representatives from the first defendant church, there are provisions in the 1958 constitution followed by the first defendant church to





elect representatives to the Bhadrasana Samithi. The plaintiff thought contended that, the selection of representatives were as per the 1934 constitution, it is found that, there is no basis to find that, said election of representatives were as per Clause 45 and 46 of the 1934 constitution. Plaintiffs themselves admitted that, the membership of first defendant church is more than 1,000 and if selection is as per Clause 46 of 1934 constitution, then the number of representative shall be 4 other than the Vicar. It is found that, the documents relied on by the plaintiffs is regarding the selection of three members including the Vicar of the church to the Malankara Suriyani Christian Association. It is also seen from the document that, a portion of the heading was scored off. Even apart from that dubious fact, it is seen that, the selection of representatives was not as per Clause 46 of the 1934 constitution.

42. Another set of facts put forward by the plaintiffs to connect the first defendant church with the Malankara Sabha is that two Vicars from the Manarcadu Church were transferred to Karattukunnel St.Marys Orthodox Church. The minutes of said church and the Baptism register of said church were proceeded by



the plaintiffs. It is found that, defendant 6 and 7 functioned as the Vicars of said church. The plaintiffs claimed that, the transfer to said church from Manarcadu church was by invoking Clause 40 of 1934 Constitution. But proving the same, no document produced by the plaintiff that, the Diocesan Metropolitan transferred defendant 6 and 7 from the first defendant church from the Karattukunnel Church by invoking Clause 40 of the 1934 Constitution whereas, Clause 63(a) of 1958 constitution followed by the first defendant church provides for additional charge can be given to the Vicars of first defendant church by the Metropolitan. Thus, the documents produced from the side of plaintiff itself proved that, the first defendant church was ever since governed by 1958 constitution and no attempt made by the Diocesan Metropolitan to make applicable the provisions of 1934 constitution in the governance of first defendant church. It is seen that, except such two incidents right from 1934 to till now there are no such transfers of priests from first defendant. Thus, the circumstances nor sanctify the contentions of the defendants. The reason for such acts of Metropolitha can only be






found as one accepting the separate entity of the first defendant church.

43. Plaintiffs also relied on Exts.A11 to A15, the plaint, written statement and judgment in O.S.No.97/2011 to argue that the Vicar of the first defendant was elected as Secretary of the Jacobite Syrian Church and thus the first defendant church is paying allegiance to the 2002 constitution of the Patriarch faction. Learned Counsel for defendants contended that, said documents by itself will not prove the genuineness of it's contents and it is to be proved properly. It is found that, the 1958 constitution of the first defendant church, established the church as a public trust and the constitution for the purpose of spiritual hierarchy accepted the Metropolitan appointed by the Patriarch as the spiritual head. The provisions in the constitution/ byelaw of the first defendant church contains rules regarding the such relation between the first defendant church and the Metropolitan. It is seen from said provisions that, the Metropolitan has no control over the governance of the church or in the appointment of priests and trustees. The General Body of the church elected the trustees and priests. It is




purely as per the byelaw of the church. The Diocesan Metropolitan of Kottayam even accepted said form of governance of the first defendant church.

44. Another relevant fact brought on record was the decree in O.S.315/1960 which held the first defendant church as a distinct public trust. Plaintiffs contended that, said decree merged in the compromise decree in appeal which modified the decree by deciding to make necessary changes to the 1958 constitution in order to make it in tune with the 1934 constitution. It is seen that, though the suit is filed with leave under Order 1 Rule 8 CPC, the appeal and compromise decree is without publication under said rule and pursuant amendment to the byelaw of the church was also not done. The record of such compromise was also not made available before the Court. Even apart from said fact, it can be concluded that, the plaintiffs and those who are holding the similar interest as that of the plaintiffs abandoned the benefits of said compromise decree if any existed in their favour. If the plaintiffs relied on said compromise decree for claim the reliefs in the suit, then the suit lacks a fresh cause of action for the reliefs sought in the suit.





45. Learned counsel for defendants also brought to the notice of the court that, along with the plaint O.S.4/1979 (Original Suit No.147 of 1974) the Metropolitan (same plaintiff) filed O.S.148/1975 for the relief that, the first defendant church shall be declared as one comes under the 1934 constitution. Said suit was dismissed as not pressed by the plaintiff. Plaintiffs in this suit admitted the filing of suit and also its disposal as not pressed. According to them, the suit was not pressed as it become infructuous by the decision in PMA Metropolitan case. If the contention of the plaintiffs that, by the listing of the first defendant church along with the plaint in O.S.147/1974 as parish of the Malankara Church has value then the filing of another suit to seek such relief separately against the first defendant church would not have been filed. It shows that, the Metropolitan attempted to impose 1934 constitution on first defendant church by a suit and it was abandoned. There is no strength in the argument that, the suit was not pressed in the light of decision in PMA Metropolitan case by the Hon'ble Supreme Court as the decision did not declare the first defendant church as a constituent of Malankara Church. The defendants also produced







Exts.B11 to B17 complaints filed by different persons as parishioners of the first defendant church to establish the provisions of 1934 constitution on the first defendant church. All said suits were abandoned half way. The same relief was sought in this suit also. Even though the plaintiffs have a contention that, O.S.No.148/1975 was abandoned for the reason of the judgment and decree in PMA Metropolitan case. The reason for the abandonment of other suits were not properly explained by the plaintiffs. From the documents relied on by the plaintiffs, it cannot be found that, the first defendant church was ever a member of the Malankara Association or was not brought into said Association by the application of the provisions of 1934 constitution in the governance of the church or on any other spheres of the church. The plaintiffs more oriented on the acts of certain persons having the colour of allegiance with the Patriarch faction. The church when considered as an individual entity always remained as a distinct public trust, the trust being the faith in the Apostolic succession from St.Peter different from St.Thomas whom Malankara Church worshipped as the founder of the church. The church was never made subject to the 1934 constitution or the 2002



constitutions. The constitution followed by the first defendant church also was not made subject either of above referred constitution. It is also seen that, there is no material to prove that, the first defendant church stood with the patriarch faction or the Orthodox faction when the dispute with said two groups occurred in the Malankara Sabha. Thus, from all the circumstances and materials now existing before this court for examination, it can only be concluded that the first defendant church is a separate and distinct entity having no allegiance with the Orthodox or Jacobite faction of the Malankara Church and for the purpose of spiritual hierarchy alone the church has limited allegiance with the Metropolitan appointed by the Patriarch but he has no role in the governance or administration of the church. It is purely as per the provisions of the byelaw adopted in 1958. It cannot be said that, by the formation of Malankara Sabha no independent churches can be established. In my opinion on examining this case, I can only hold that, the first defendant church is not a constituent of Malankara Sabha and as such the decision of Hon'ble Supreme Court in

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K.S.Varghese Vs. St.Peters and St.Pauls Orthodox church (2017 (3) KLT 261) has no application in this case.

46. On arriving at such a conclusion, this Court has to proceed with the trial of the case. At this juncture, the trial cannot be proceeded without deciding the preliminary issues regarding the maintainability of the suit. The preliminary issue raised is;

Is the suit maintainable?

47. The maintainability of the suit was challenged on the following grounds.


- 1) The suit is bad for leave under Section 92 CPC.
- 2) The suit is barred under Section 41(j) of the Specific Relief Act.
- 3) The suit is barred under Order II Rule II CPC.
- 4) The suit is barred by principles of resjudicata.
- 5) The suit become infructuous by the decision in O.S.7/2019 on the file of Hon'ble Additional Sub Court, Kottayam.





48. Defendants contended that, the relief sought in the suit is to replace the existing system of administration of first defendant church by a new system. It amounts to the setting up of a new scheme for the administration of first defendant church which brought the suit within the frame work of Section 92 CPC. The learned counsel for plaintiffs contended that, this suit is for simple injunction to restrain the illegally appointed Vicars and Assistant Vicars from conducting religious service in first defendant church. In such a suit, there is no need for leave under Section 92 CPC.

49. The learned counsel relied on the decision of Hon'ble High Court in AS 260/199 (Varkey Varghese and Others Vs. St.George Orthodox Hebron Church Kollappady) RFA No.236/2014 (Fr.M.V.Abraham and others Vs. St.George Orthodox Church Kadamattom, 2009(3) KLT 566, RFA No.135/2019, RFA 677/2020, RSA 197/2019, RFA 677/2020, RSA197/2019, RFA 570/2004 and the decision 2012 (4) KLT 283 to support his argument and vehemently argued that, Parish churches having their own byelaws cannot be treated as independent and by the adoption of 1934 constitution, there is no need for leave under Section 92 CPC. As





Parish Church is not independent their own constitution is not valid. Hence, the petitioners contention that, suit is want for leave under Section 92 CPC is not legally sustainable.

50. The argument of the Learned Counsel for the defendants were that, the relief of the suit alone is not the criteria for determining this scope of the suit under Section 92 CPC and court while considering said issue shall go into the purpose for which such suit is filed. The Learned Counsel also argued that, the decisions relied on by the counsel for plaintiff are pronounced on the basis of pleadings which admitted that, the contesting church is a part of Malankara church whereas the contention of the first defendant church is that, it is not a part of Malankara church and is a separate entity. In such a circumstance, the relief sought in the plaint which results in the removal of Vicars and Trustees of the first defendant church is definitely a relief under Section 92 CPC.

51. It is found from the pleadings that, the plaintiffs are seeking a relief of removal of the presently officiating priests and trustees of the first defendant church on the ground that, they are not elected as per 1934 constitution. It is an admitted fact that, said



Priests and Trustees were elected as per 1958 constitution followed by the first defendant church. Though the plaintiff claimed that, they are thus illegal Trustees and Vicars, it cannot be held that, for removing them a simple injunction decree is sufficient and that is the actual intention of the suit. On going through the written statement of the defendants in the suit, it is found that, the same did not contain a contention or rather admission that, the first defendant church is a constituent of Malankara Church. The core of their contention is that, first defendant is a unique independent church not belongs to the Orthodox or Jacobite faction of Malankara Orthodox Church. The defendants categorically stated in the written statement that, the first defendant church did not accept the 1934 constitution nor it was administered at any point of time by the provisions of 1934 constitution.

52. The relief sought in the suit is injunction alone, but the relief is to prevent the presently officiating Vicars and Trustees from discharging their functions in such capacity and to replace them by the vicars and Assistant Vicars appointed by the Diocesan Metropolitan, Kottayam under 1934 constitution. The claim of the





plaintiffs was that, they being not appointed legally cannot be considered as Vicar and Trustees of the Church. It is difficult to find merit in said argument of the counsel in the light of the decision of Hon'ble Supreme Court in **Syed Mohammed Salie Labbai Vs. Mohammed Haneefa** reported in (1976) 4 SCC 780 which held that, *"it is true that, the defendants have only been defacto managers as Pesh Imam or otherwise but that does not make any difference so far as application of Section 92 CPC is concerned. It is true that, Section 92 CPC applies only when there is any alleged breach of any express or constructive trust created for a public, charitable or religious purpose. It is also applies where the discretion of the court is necessary for the administration of any such public interest. In the instant case, the defendants have no doubt been looking after the trust properties in one capacity or the other and had been enjoying the usufruct thereof. They are therefore trustees 'de son tort' and the mere fact that, they put forward their own title to the properties would not make them trespassers."*

53. The Hon'ble Supreme Court in **S.P.Sarawathi Vs. Ramji Tripathi** reported in (1974) 2 SCC 695 held that, *"In deciding*



*whether a suit falls within Section 92 CPC the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. Wherever a suit is brought by two or more persons under Section 92, the suit is not necessarily to vindicate the right of public. It is the object or purpose of the suit and not the relief that should decide whether it is one for vindicating the right of the public or individual right of the plaintiffs or third persons."*

54. On analysing the pleadings in the plaint, it is revealed that, the plaintiffs filed the suit not to satisfy any of their personal interest that, they shall be served with a particular group or set of Priests, but to establish the provisions of 1934 constitution in the administration as well as in the religious sphere of the first defendant church. They admitted that, the present administration and the religious service in first defendant church is not in accordance with 1934 constitution. Thus, they want to replace the present administrative set up by the 1934 constitution. Such a purpose of the suit definitely is not for vindicating any of their personal rights. The appointed Vicars and Assistant Vicars

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(Defendants 2 to 5) may have a personal right to vindicate against the present vicars and trustees but in no way the plaintiffs have any such personal rights to be asserted or denied. They represents the interest of the public as according to their claim also, that 1934 constitution shall be made applicable in the governance of the 1<sup>st</sup> defendant church including the appointment of Vicar to perform religious services is the church and its institutions.

55. Thus, I am of the opinion that the relief though sought is one for simple injunction only, the intention of the suit and effect of granting the relief in the suit is to establish the power of Metropolitan of Kottayam Diocese of Malankara Church to make appointments of vicars and priests to Manarcadu church and also to recognise defendants 2 to 5 to the exclusion of defendants 6 to 14 as the Vicar and Assistant Vicar of the 1<sup>st</sup> defendant church. The Vicar is a co Trustee of the church as per 1934 constitution. The object of the suit found as not for asserting any personal right of the plaintiffs.

56. Moreover, it is pertinent to note that OS.7/19 filed against the defendants 6, 15, 16 and 17 in this suit, before the Hon'ble Sub Court Kottayam on the same pleadings to establish the





provisions of 1934 constitution over the administration of 1<sup>st</sup> defendant church with leave under Section 92 CPC. One of the plaintiffs in said suit is the 2<sup>nd</sup> defendant in this suit. Thus, the fact 1<sup>st</sup> defendant church is a public trust seen admitted in O.S.7/2019 and the administration existing at present over said trust wants to be removed or altered by the present suit. The decisions relied on by the counsel for plaintiffs distinguished on facts from this case that, in said cases the written statement filed by the defendants contained contention that, the churches involved in said cases is either a constituent of Malankara Church or belongs to Patriarch faction. Though the plaintiffs contended that, the 16<sup>th</sup> defendant in the written statement admitted that the first defendant church is Jacobite church. It is found that, the term Jacobite Church is different from the Jacobite faction of Malankara Sabha. Hence, it can only be concluded that the plaintiffs ought to have seek the relief sought in this plaint by obtaining leave under section 92 CPC. Plaint filed without such leave is nonest in the eye of law.

57. Another contention of the petitioner/defendants 12,17 and 22 were that, the suit is barred under section 41(j) the specific



relief act. Plaintiffs are having no personal interest in the subject matter of the suit and there is not even prima facie evidence that they are Parishioners of 1<sup>st</sup> defendant church.

58. Plaintiffs claimed that they are parishioners of the 1<sup>st</sup> defendant church and when they demanded the defendants 6 to 12 that they being priest not appointed under 1934 constitution shall not conduct any religious service in the church and its institutions, they threatened that they will conduct the religious service as Vicar and Assistant Vicar and the other defendants also threatened that they will brought priests and prelates not appointed under 1934 constitution to the 1<sup>st</sup> defendant church and its institutions for conducting religious services. Plaintiffs if members of 1<sup>st</sup> defendant church has a civil right to get established a legal form of administration in the 1<sup>st</sup> defendant church. According to plaintiffs the 1<sup>st</sup> defendant church is a constituent of Malankara church in which they are members are not conducting as per 1934 constitution which is binding on the church and they have a personal right to get such misgovernance removed and to install the legal form of administration in the church. There is no doubt that

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such a personal interest in the subject matter possessed by the plaintiffs if they are parishioners of 1<sup>st</sup> defendant church.

59. From the pleadings advanced by the defendants it is found that almost all defendants raised the contention that plaintiffs have no personal interest in the subject matter of the suit. Defendants 7 to 12 specifically contented that there are no materials before the court to find that plaintiffs are Parishioners of 1<sup>st</sup> defendant church in spite of such a specific contention the plaintiffs did not care to produce any material before the court that they are parishioners of 1<sup>st</sup> defendant church, even though they produced a large number of documents from their side to establish that 1<sup>st</sup> defendant church is a constituent of Malankara Church. The plaintiffs have got a personal interest in the subject matter of suit, if they are parishioners of first defendant church. At present there is no material before the court of find that plaintiffs are parishioners of 1<sup>st</sup> defendant church.

60. Another contention of the defendants was that, O.S.No. 7/19 was filed with leave under section 92 CPC by Fr. Laiju Markose, the 2<sup>nd</sup> defendant in this suit for and on behalf of

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Manarcadu church as the 1<sup>st</sup> plaintiff and as 2<sup>nd</sup> plaintiff in his personal capacity along with other 3 plaintiffs. The pleading in OS 7/19 and this suit are exactly the same. The gist of the pleadings in both suits is that the Malankara Metropolitan of Kottayam Diocese appointed defendants 2 to 5 as the Vicars and Assistant Vicars of Manarcadu church. The Kalpana produced as Exts.A2 and A3 in this suit. Ext.A2 was the suit document in OS 7/19 also. Thus, the cause of action alleged in both suits are one and the same and the disposal of O.S.No.7/19 made this suit infructuous and the suit is also barred under order II rule 2 CPC.


61. The contention of the respondent/plaintiff were that the similarity in pleadings is due to the fact that it contains the facts regarding the formation of Malankara Church, the adoption of 1934 constitution and its applicability to the 1<sup>st</sup> defendant church. Said pleadings found the basis for reliefs in both suits, but the cause of action for both suits are different through occurred on the same day.

62. Learned counsel for the plaintiffs also argued that, there is no legal mandate to combine all the reliefs in one suit. The learned counsel relied on the decision of Hon'ble High Court in 2002(3) KLT

322 Ramachandran Nair Vs. Sukumaran Nair which held on facts that earlier suit which did not raise a relief for recovery of possession but for declaration alone and the second suit filed for recovery of possession and injunction does not become barred under Order 11 Rule 2 CPC.

63. The learned counsel also relied on the decision of Hon'ble High Court reported in 1996(1) KLT SN Case No.16, which held that, there is no bar under Order 11 Rule 2 when the cause of action is different. Another decision relied on by the counsel for plaintiff is that reported in 1989 (2) KLT 377 (Raman Itiyathi Vs. Pappy Bhaskaran).

64. The argument of the learned counsel for petitioner/defendants 12, 17 and 22 were that, the term cause of action is not confined to the particular paragraph in the plaint which states the immediate reason for filing the suit. Placing reliance on a number of decisions the learned counsel for both petitioners argued that cause of action is the bundle of facts which gave right to the plaintiff to sue. According to the counsel for petitioners, the cause of action in both suits contained in the pleadings from paragraph 2 onwards and





said cause of action in O.S.No.7/2019 and this suit are one and same. The counsel pointed out the pleadings and the suit document relied on by the plaintiffs to support their argument. The plaint in O.S.No.7/2019 marked as Ext.A25 in this suit.

65. On an evaluation of the pleadings in this suit and O.S.No.7/2019, it is found that, both are identical. The suit documents are also the same. The right of the plaintiffs in both suits is based on the Kalpana issued by Diocesan Metropolitan, Kottayam appointing defendants 2 to 5 as the Vicars and Assistant Vicars of Manarcadu St.Mary's Church. In O.S.No.7/2019, the administration of the church sought to be in accordance with 1934 constitution and in the relief sought in this suit that the religious services in first defendant church shall be done in accordance with 1934 constitution alone. Thus, it can very well found that, the cause of action alleged in both suits are similar and identical. The decision relied on by the learned counsel for plaintiff in Raman Itiyathi Vs. Pappy Bhaskaran 1989 (2) KLT 377 does not held that, when a particular cause of action give rise to several reliefs all reliefs need not unite in similar suit, even without the leave of the court. The

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decision by paragraph No.7 and 8 held that, "Bar under O.2 R.2 CPC. is also an equally untenable contention. O.2 R.2 does not require that when a transaction or right gives rise to several causes of action they should all be combined in one suit or that the plaintiff must lay his claim alternatively in the same suit for these different causes of action. The fundamental postulate for the application of the rule is that there must be one and only one cause of action in fact before its several provisions can apply. The cause of action cannot be split up to sue for one part in one suit and another part in another suit. When the cause of action gives rise only to one relief, the entire claim must be included in the suit. If not a subsequent suit for the omitted or relinquished portion is barred for ever, the question of reserving the right with or without permission does not arise in such a case. There may be cases in which the same cause of action may give rise to several reliefs. In such cases also, all these reliefs should be united in the same suit. If not the bar will apply. But in such cases, he can obtain leave of court and reserve one or more reliefs for a separate suit. The bar will apply in such cases only if the leave of court is not obtained. Even then the whole claim will

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*have to be included, otherwise the bar will apply. Permission could only be in cases where more than one relief is there under the same cause of action. The object of the rule is to prohibit splitting of claims and splitting of remedies and thereby to avoid multiplicity of suits and the resultant harassment (Mohammed Khalil Khalil Khan and others v. Mahbub Ali Mian and others AIR 1949 PC 78).*

*Cause of action means every fact which is material to be proved to entitle the plaintiff to succeed; every fact which a defendant has a right to traverse. It is the media upon which the plaintiff asks the court to arrive at a conclusion in his favour. It means every fact which will be necessary for the plaintiff to prove, if traversed, in support of his right to judgment. In other words, the right and its infringement constitutes cause of action. It is the foundation of the suit and if it enables a man to seek a larger and wider relief than that to which he limits his claim, he cannot afterwards seek to recover the balance by independent proceedings. Cause of action is the bundle of facts which the plaintiff must prove in order to succeed in his action. For the purpose of R.2 cause of action is the one which gives occasion for and forms the foundation of the suit."*

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66. Thus, there need not be any hesitation to hold that, the cause of action alleged in this suit and O.S.No.7/2019 are the same. It is also found that, no leave was sought by the plaintiffs in this suit to sue subsequently for the reliefs in respect of the same cause of action.

67. The counsel for defendants argued that, when a relief on the same cause of action was granted re-litigation on the same set of facts is merely an abuse of process of law. The learned counsel for defendants in buttressed his such contention on the basis of decision of Hon'ble Supreme Court in Jai Singh Vs. Union of India others reported in (1977) 1 SCC 1 which held that, *"it has been brought to our notice that, after the dismissal of the writ petition by the Hon'ble High Court the appellant has filed a suit on which he has raised the same question which is the subject matter of the writ petition. In our opinion, the appellant cannot pursue two parallel remedies in respect of the same matter at the same time."*

68. Another decision relied on by the counsel for petitioner is that of Hon'ble Supreme Court in Shipping Corporation of India Ltd. Vs. Machado Brothers and others reported in (2004) 11 SCC 168






"Thus, it is clear that, by the subsequent event of the original pleadings has become infructuous.

69. *Thus, it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice, which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under S.151 CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.*

70. *We have already noticed that the courts below have also held that the application of the appellant lacks in bona fides. We fail to understand how this is so. If a party has a legal right to ask for dismissal of an infructuous suit, and pursuant to the said right it makes an application for dismissal of the said suit, the same cannot be termed as an act in malice.*





71. The Hon'ble Supreme Court in *Pasupuleti Venkateswarlu V/s. The Motor and General Traders* reported in 1975 (1) SCC 770 and also the decision in *Omprakash Gupta V/s. Ranbir B Goal* reported in 2002 (2) SCC 256 were also relied on by the counsel for defendants and argued that, the court has the power to take note of subsequent events and mould the reliefs accordingly. The court held that, *for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.*

72. There is no doubt as to the fact that, the inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But, that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a



necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of Section 151 of the Code, they do not control the undoubted power of the court of the Code conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the court.

73. The Hon'ble Supreme Court in above referred decisions made it clear that, if there is no specific provision which prohibits the grant of relief sought in an application filed under Section 151 of the Code, the courts have all the necessary powers under Section 151 CPC to make a suitable order to prevent the abuse of the process of court.

74. Therefore, the court exercising the power under Section 151 CPC first has to consider whether of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then the court will consider whether such power should be exercised or not on the basis of facts mentioned in the application.

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75. We have already noticed that, the courts below have also held that the application of the appellant lacks in bonafides. We fail to understand now this is so. If a party has a legal right to ask for dismissal of an infructuous suit, and pursuant to the said right it makes an application for dismissal of the said suit, the same cannot be termed as an act in malice. It is also held that, continuation of a suit which has become infructuous by disappearance of the cause of action would amount to an abuse of the process of the court, and interest of justice requires that such suit should be disposed of as having become infructuous. The application under Section 151 CPC in this regard is maintainable.

76. Another important factor which justifies the prayer of the petitioner is that, the plaintiffs filed O.P TP 26/2019 for transfer of this suit to Additional Sub Court, Kottayam to try along with O.S.No.7/2019. Said petition was withdrawn by the plaintiffs in the suit. The petitioners/ defendants 12, 17 and 22 produced the copy of TP OP 26/2019.

77. Learned counsel for plaintiff argued that, for the reliefs sought in O.S.No.7/2019, leave under Section 92 CPC was necessary



hence the same was filed in Sub Court whereas the suit filed for mere injunction filed before this court. It is very well clear that, when the plaintiff filed O.S.No.7/2019, there is no legal impediment for these plaintiffs to took part in that suit and sought their reliefs. It is also found from records that, the 5<sup>th</sup> defendant in O.S.No.7/2019 also filed impleding petition to get himself impleaded in this suit. By the decision in O.S.No.7/2019, it is found that, the first defendant church is bound by 1934 constitution and the governance of the church shall be in accordance with said constitution. It relied in respect of the same facts was granted in said suit. No other relief sought by the plaintiffs in the suit. In fact said petition was also not prosecuted. Thus, in all aspects, it can be found that, by the decision in O.S.No.7/2019 on the file of Additional Sub Court, Kottayam, the relief in this suit has become infructuous and no cause of action continues to exist to grant a decree on the basis of the same pleadings in this suit.

78. Regarding the contention on bar under Order II Rule 2 CPC, the precedents available are only on the fact where such a contention was raised by the defendants in the subsequently



instituted suit. No precedents found on the fact that, defendants in the suit raised such a contention in the first suit on the disposal of the subsequently instituted suit. The argument advanced was that, the word shall not sue afterwards in Order II Rule 2 also applies 'to continue to sue'. According to the counsel for defendants such an interpretation is more possible in the light of fact that the term 'previously instituted suit' is absent in the provision. Strictly speaking the provision does not contain any qualification for the word 'sue afterwards to interpret expressly that it refers only a fresh suit afterwards, but as the contention of the defendants requires an interpretation of the provision in CPC I left it open for the decision of higher courts at the time of Appeal.

79. In the light of facts discussed above, it is found that, the suit is bad for leave under Section 92 CPC and it has also become infructuous by the decision of Hon'ble Additional Sub Court in O.S.No.7/2019.

80. Thus, in the light of discussion on preliminary issue, it can only be found that, the suit is not maintainable and is liable to be rejected. It is also found that, by reason of the decision of the

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Hon'ble Additional Sub Court in Kottayam in O.S.No.7/2019, the suit is liable to be dismissed as infructuous and is hereby dismissed.

Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in open court, on this the 8<sup>th</sup> day of April 2021.

Sd/-  
Ashadevi V S  
Additional Munsiff.

#### A P P E N D I X

##### Exhibits Marked for Plaintiffs:-

A1	-	05.07.2018	Constitution of the Malankara Orthodox Syrian Church.
A2	-	16.08.2017	Copy of the Kalpana No.K165/2017.
A3	-	02.07.2018	Copy of the Kalpana No.K132/2018.
A4	-	-	Copy of the Complaint in OS.142/1974 before the Sub Court, Kottayam.
A5	-	-	Copy of the Execution Petition numbered as EP.20/2001 in OS.81/1977 which was filed at Hon'ble Additional District Court Ernakulam.



- A6 - - Copy of the Judgment of the Hon'ble Supreme Court of India in the Special Leave Petitions to Appeals(c) Nos.33156-33159/2014 with records of proceedings.
- A7 - 20.12.2003 Telephone Directory 2003 published by St.Mary's Jacobite Syrian Church.
- A8 - - Copy of the Minutes of the Committee of Karattukunnel St.Mary's Orthodox Church and Copy of the Minutes of the General Body of Karattukunnel St.Mary's Orthodox Church.
- A9 - - Copy of the Kalpana Book kept at the Diocesan Office of Kanajara Orthodox Church.
- A10 - - Copy of the Baptisam Register of Karattukunnel St.Mary's Church.
- A11 - - Copy of the Plaint in OS.97/2011 before the Munsiff's Court Kottayam.
- A12 - - Copy of the Written statement of defendants 2,3,4 in OS.97/2011 before Munsiff's Court, Kottayam.
- A13 - 16.06.2012 Copy of the Deposition of DW1 in OS.97/2011 before the Munsiff's Court, Kottayam.
- A14 - 21.07.2012 Copy of Judgment in OS.97/2011 before the Munsiff's Court, Kottayam.
- A15 - 21.07.2012 Copy of Decree in OS.97/2011 before the Munsiff's Court, Kottayam.



- A16 - - Copy of the Budget and Income and Expenditure.
- A17 - 18.12.1971 Copy of the Kalpana issued by the Ivanios Metropolitan of Kottayam Diocese of Malankara Orthodox Church.
- A18 - 23.12.1969 Copy of Kalpana issued by the Ivanios Metropolitan of Kottayam Diocese of Malankara Orthodox Church. (In agreement note date mentioned is 23.12.1971)
- A19 - 16.12.1968 Copy of Kalpana issued by the Ivanios Metropolitan of Kottayam Diocese of Malankara Orthodox Church.
- A20 - 28.12.1967 Copy of Kalpana issued by Mar Ivanios Metropolitan of Kottayam Diocese of Malankara Orthodox Church.
- A21 - 13.12.1973 Copy of the Kalpana issued by Mar Ivanios Metropolitan of Kottayam Diocese of Malankara Orthodox Church.
- A22 - 26.08.1967 Copy of the Kalpana issued by Mar Ivanios Metropolitan of Kottayam Diocese of Malankara Orthodox Church. (In argument note date mentioned is 26.08.1971)
- A23 - 24.12.1970 Copy of the Kalpana issued by Mar Ivanios Metropolitan of Kottayam Diocese of Malankara Orthodox Church.
- A24 - 04.09.2016 Copy of the Complaint filed by the defendants 6,9,11 before the Diocesan Metropolitan (In argument note date mentioned is 1.9.2016)





- A25 - - Certified copy of the Plaint in OS.7/2019 before the Sub Court, Kottayam.
- A26 - 18.09.2020 Certified copy of the Judgment in OS.7/2019 before the Sub Court, Kottayam.
- A27 - 18.09.2020 Certified copy of the Decree in OS.7/2019 before the Sub Court, Kottayam.
- A28 - - Certified copy of the Written statement filed by the 1<sup>st</sup> defendant in OS.7/2019 before the Sub Court, Kottayam.
- A29 - - Certified copy of the Written Statement filed by the 7<sup>th</sup> defendant in OS.7/2019 before the Sub Court, Kottayam.
- A30 - - Certified copy of the Written Statement filed by the 8<sup>th</sup> defendant in OS.7/2019 before the Sub Court, Kottayam.
- A31 - - Certified copy of the Additional Written Statement filed by the 8<sup>th</sup> defendant in OS.7/2019 before the Sub Court, Kottayam.
- A32 - - Certified copy of the Written Statement filed by the 5<sup>th</sup> defendant in OS.7/2019 before the Sub Court, Kottayam.
- A33 - - Certified copy of the Written Statement filed by the 6<sup>th</sup> defendant in OS.7/2019 before the Sub Court, Kottayam.



- A34 - - Certified copy of the Written Statement filed by the 4<sup>th</sup> defendant in OS.7/2019 before the Sub Court, Kottayam.
- A35 - - Certified copy of the Written Statement filed by the 3<sup>rd</sup> defendant in OS.7/2019 before the Sub Court, Kottayam.
- A36 - - Certified copy of the Written Statement of Defendant 4 and 8.
- A37 - - Certified copy of the Plaint in OS.7/2019 filed before the Sub Court seeking permission U/s 92 of CPC.
- A38 - 31.12.1970 Notary attested copy of the Attendance Register of the Malankara Syrian Christian Association.
- A39 - 18.10.1970 Authorization Letter of the delegates elected from St.Mary's Church, Manarcadu to participate in the Malankara Association Meeting held on 31.12.1970.
- A40 - 26.10.1970 Information regarding the election of delegates from the St.Mary's Church Manarcadu to the Malankara Association held on 31.12.1970.
- A41 - - Copy of Annual Report for the year 1973 of Kottayam Diocese of Malankara Orthodox Syrian Church.
- A42 - 19.06.2020 Order of the Hon'ble Supreme Court dismissing MA.Nos.1095-1097/2020 in CA No.5411/2017, 8789/2015 and 3674/2015.



- A43 - - Copy of the Order of the Hon'ble Supreme Court in SLP No.14981/2020 together with the copy of the SLP.
- A44 - - Copy of the Written Statement of the defendants 2, 3, 4, 5, 6, 12, 13, 14, 15, and 17 in OS.148/1975.

**Exhibits Marked for Defendants:-**

- B1 - 16.08.2017 Copy of Letter No.K.166/2017.
- B2 - 02.07.2018 Copy of Letter No.K.135/2018.
- B3 - 02.07.2018 Copy of Letter No.K.134/2018.
- B4 - 02.07.2018 Copy of Letter No.K.133/2018.
- B5 - 28.06.1966 Copy of Letter.
- B6 - 28.06.1966 Copy of Letter.
- B7 - 31.12.1965 Copy of Letter.
- B8 - 14.12.1972 Copy of Letter.
- B9 - 23.04.1961 to]  
28.05.1961 ] Copy of Minutes Book.
- B10 - - Copy of Complaint in OS.4/2000 of Munsiff Court, Kottayam.
- B11 - - Copy of Complaint in OS.7/2001 of Munsiff Court, Kottayam.





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|-----|---|------------|--|
| B12 | - | -          | Copy of the Plaint in OS.8/2001 of Munsiff Court, Kottayam.  |
| B13 | - | 12.01.2001 | Copy of Judgment in OS.4/2000 of Additional District Judge, Ernakulam.   |
| B14 | - | 02.06.2001 | Copy of Judgment in OS.7/2001 and 8/2001 of Additional District Judge, Ernakulam.  |
| B15 | - | 19.06.2014 | Copy of Judgment in AS.No.156/2001(B) of High Court of Kerala.   |
| B16 | - | -          | Copy of the Plaint in AS.No.617/2001 in High Court of Ernakulam.   |
| B17 | - | -          | Copy of Plaint in AS.635/2001 of High Court of Kerala.   |
| B18 | - | 18.06.1964 | Copy of Common Judgment in OS.315/1960 and OS.35/1961 of Munsiff Court, Kottayam.  |
| B19 | - | 15.02.2018 | Copy of the Supreme Court Special Leave to Appeal(c) No(s)5432/2018.   |
| B20 | - | 11.09.2018 | Constitution (1958.)   |
| B21 | - | 13.12.2012 | Copy of Order in RFA No.350/2007(E) High Court of Kerala.  |
| B22 | - | 24.02.2014 | Copy of Order in AS.795/1999(c) High Court of Kerala against the Judgment in OS.13/1990 of Additional District Court, Ernakulam. |



- B23 - 19.03.2015 Copy of the Order of High Court in RFA.114/2006(f)(OS.19/2003 of Additional District Court, Ernakulam).
- B24 - 20.03.2015 Copy of High Court Order RFA774/2010 (OS.16/2009 of Additional District Court, Ernakulam).
- B25 - 09.06.2015 Copy of High Court Order in RFA574/2010(J) (In OS.21/2004 of Additional District Court, Ernakulam).
- B26 - 12.12.2015 Copy of High Court Order in AS.No.117/1998 (OS.No.40/1977 of Additional District Court, Ernakulam).
- B27 - 17.06.2016 Copy of High Court Order in RFA.No.782/2010 (OS.18/1986 of Additional District Court, Ernakulam dated 11.10.2010).
- B28 - 20.02.2021 Copy of Report.
- B29 - 20.02.2021 Copy of Minutes Book 30.07.1967.
- B30 - 27.09.2019 Copy of Letter.
- B31 - 20.02.2021 Copy of Minutes Book (4.8.57 to 31.8.57)
- B32 - 20.02.2021 Copy of Minutes Book.  
(11.10.1957 to 20.10.1957).
- B33 - 28.10.1977 Copy of Agreement.
- B34 - 29.06.1982 Copy of Agreement.
- B35 - 04.06.1992 Copy of Agreement.
- B36 - 15.06.1979 Copy of Agreement.
- B37 - 20.02.2021 Copy of Minutes Book  
(3.3.1957 to 10.3.1957)



- |     |   |            |   |
|-----|---|------------|---|
| B38 | - | 23.06.1982 | Copy of Agreement.  |
| B39 | - | 20.02.2021 | Copy of the Plaint in OS.148/1975 of Sub Court, Kottayam.                               |
| B40 | - | 18.12.1996 | Copy of the Order in OS.72/1977 of Additional District Judge.                           |
| B41 | - | 20.02.2021 | Copy of the Plaint in OS.426/1997 of Munsiff Court, Kottayam.                           |
| B42 | - | 01.02.1999 | Copy of the Judgment in OS.16/1997 of Additional District Judge, Ernakulam.             |
| B43 | - | 20.02.2021 | Copy of the Plaint in OS.43/2007 of the Hon'ble High Court of Kerala.                   |
| B44 | - | 20.02.2021 | Photo copy of the News Paper.   |
| B45 | - | 20.02.2021 | Copy of the Affidavit in IA.1739/2003 in OS.10/2003 of District Court, Ernakulam.       |
| B46 | - | 20.02.2021 | Photo copy of the News Paper.   |
| B47 | - | 20.02.2021 | Copy of the Affidavit in IA.1769/2003 in OS.41/2003.                                    |
| B48 | - | 20.02.2021 | Photo copy of the News Paper.   |
| B49 | - | 20.02.2021 | Copy of the AIR1997 Supreme Court 1035.   |
| B50 | - | 21.08.2015 | Copy of the Order of Supreme Court of India in Special Leave Petition (c) No.2869/2015. |





- B51 - 27.09.2019 Copy of the Letter No.E1.62/2019.
- B52 - 25.10.2019 Copy of the Order of District Judge  
Ernakulam in IA624/2007 in  
OS.1/1124 M.E.

**Court Exhibits:- Nil.**

**Third Party Exhibits:- Nil.**

**Witness Examined for Both sides:- Nil.**

Id/-  
Additional Munsiff

//True copy//

Copied by: Rejikuttan Nair *RN*

Compared by: Susan *SW*

*Indeept*  
Fair & copy Supd

CERTIFICATE

This carbon copy is issued as per order in  
I.A. 16/2021 dated 9/4/2021  
Court Fee stamp for ₹ 200/- (Rupees Two  
hundred only) has  
been affixed towards the value of necessary copying sheets

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Fair Copy Superintendent

Addl. Munsiff Court, Kottayam  
 Copy of Judgment in  
 O.S. No. 481/2018  
 Dated : 08.04.2021

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A-558/2021

OS-481/2018

Copy of Judgment

MUNSSIFF'S COURT, KOTTAYAM

Case No. OS-481/2018  
 Application No. A-558/2021  
 Copy of Judgment  
 Name of applicant Adv. Bobby John K.A.  
 Date of application 9/4/2021  
 Date of sheets called for 29/4/2021  
 Date of production 20/4/2021  
 Date of calling for 20/4/2021  
 Date of production of 20/4/2021  
 Date when made ready 20/4/2021  
 Date fixed for appearance 19/5/2021  
 Date of issue 20/4/2021

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